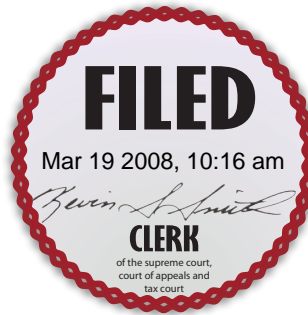


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

SHAWNA D. WEBSTER
Webster & Webster, LLC
Vincennes, Indiana

ATTORNEY FOR APPELLEE:

GARA U. LEE
Vincennes, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

BRANDON HOOTEN,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 42A01-0707-JV-339
)	
KNOX COUNTY DEPARTMENT OF)	
CHILD SERVICES,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE KNOX SUPERIOR COURT
The Honorable W. Timothy Crowley, Judge
Cause No. 42D01-0701-JT-2

March 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Respondent Brandon Hooten (“Father”) appeals an order terminating his parental rights to L.H. upon the petition of the Appellee-Petitioner Knox County Department of Child Services (“the DCS”). We affirm.

Issue

Father presents a single issue for review: Whether the DCS established, by clear and convincing evidence, the requisite statutory elements to support the termination of his parental rights.

Facts and Procedural History

On August 30, 2005, L.H. was born to Father and Heather Biehl (“Mother”). On October 19, 2005, at approximately 4:00 a.m., Mother was found drunk and wandering around outside of her apartment building. L.H. had been left alone inside the apartment. Mother was arrested for public intoxication, resisting law enforcement, battery on a police officer and neglect of a dependent, and L.H. was placed in foster care. Father was advised to contact caseworker John Faulkner to pursue placement of L.H. in Father’s home, but Father did not follow through.

On October 28, 2005, the DCS filed a petition alleging that L.H. was a Child in Need of Services (“CHINS”) because her parents were unable to provide necessary food, clothing, shelter, medical care, education or supervision. At the fact-finding hearing on March 29, 2006, Mother admitted the allegation and Father did not appear. L.H. was determined to be a CHINS. The dispositional order provided that the parents should refrain from using illegal substances, submit to drug screens, maintain employment and housing, report address

changes, and participate in services including substance abuse evaluations.

On January 8, 2007, the DCS petitioned to terminate Father's and Mother's parental rights to L.H. A hearing was conducted on May 23, 2007 and on June 8, 2007. On July 5, 2007, the trial court entered an order terminating Father's and Mother's parental rights. Father now appeals.¹

Discussion and Decision

A. Standard of Review

This court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this Court neither reweighs the evidence nor judges the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

B. Requirements for Involuntary Termination of Parental Rights

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. The purpose of terminating parental rights is not to punish the parents, but to protect their children. Id.

Indiana Code Section 31-35-2-4(b) sets out the elements that the DCS must allege and

¹ Mother's parental rights were also terminated. Prior to the hearing on the termination petition, she had executed a Consent to Adoption and Voluntary Relinquishment of Parental Rights. She is not an active party

prove by clear and convincing evidence in order to terminate a parent-child relationship:

(A) One (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

The trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. In re A.A.C., 682 N.E.2d at 544. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired. Id.

to this appeal.

C. Analysis

Father contends that the DCS presented insufficient evidence to establish a reasonable probability that the conditions that resulted in L.H.'s removal will not be remedied or that the continuation of the parent-child relationship would pose a threat to L.H. More specifically, Father claims that the conditions leading to L.H.'s removal were attributable to Mother rather than him and that he has made significant efforts to deal with his substance abuse issues.

It is well-settled that a parent's habitual patterns of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). Among the circumstances that a trial court may properly consider are a parent's criminal history, drug and alcohol abuse, historical failure to provide support, and lack of adequate housing and employment. McBride v. Monroe County Office of Family and Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

At the termination hearing, evidence was adduced that Father had a clean drug screen on March 23, 2007 and also had clean drug screens thereafter. He had obtained employment on March 29, 2007. As part of his probation following a conviction for Maintaining a Common Nuisance, Father began a drug treatment program on March 15, 2007. Father's substance abuse counselor, Rick Warthen ("Warthen"), testified that Father was in the beginning phase of his treatment. He estimated that Father's chance of remaining drug free in the future was "at least 50/50," subject to completion of a treatment program. (Tr. 77.)

Although Father's efforts to maintain employment and remain drug-free are commendable, they occurred after the petition for termination was filed and at least partially in response to probation requirements. The trial court could properly consider Father's

historical conduct with respect to L.H. See McBride, 798 N.E.2d at 199. When L.H. was removed from Mother's care in October of 2005, the DCS was unable to place L.H. with Father until concerns about his drug use were resolved. Father admitted to family case manager Sheree Russell and to Warthen that he had used drugs since the age of nine. He participated in some services² but left the State of Indiana in August of 2006. He did not maintain contact with the DCS or participate in services until termination proceedings were commenced.

On February 19, 2007, after services were resumed, Father tested positive on a drug screen for marijuana and cocaine. On March 21, 2007, he tested positive for marijuana. Warthen testified that Father was cannabis dependent, but had a history of using other drugs including methamphetamine and cocaine.

As of the termination hearing, Father had not completed drug treatment services. He was on probation but had not timely completed his community service requirement. He was living with his mother and had employment of two months' duration. He had not demonstrated in the past that he could provide L.H. with adequate housing, necessities, and supervision. We may not reweigh the evidence, as Father urges, to find that he has taken adequate measures to provide a drug-free and stable home for L.H.

Accordingly, the DCS presented clear and convincing evidence that the reasons for L.H.'s placement outside the home would not, in reasonable probability, be remedied. As Indiana Code section 31-35-2-4(b)(1)(B) is written in the disjunctive, the DCS need not have established both a reasonable probability that the conditions would not be remedied and that

² He attended a case conference and had two clean drug screens.

continuation of the parent-child relationship posed a threat to L.H.'s well-being. Thus, we need not address Father's contention that he posed no threat to L.H.

Conclusion

The DCS established by clear and convincing evidence the requisite elements to support the termination of Father's parental rights to L.H.

Affirmed.

NAJAM, J., and CRONE, J., concur.